BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

LEMONS GROWN IN CALIFORNIA AND ARIZONA; PROPOSED WEEKLY LEVELS OF VOLUME REGULATION FOR THE 1991-92 SEASON	)	DOCKET NO. FV-91-289PR

COMMENTS OF THE DEPARTMENT OF JUSTICE

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By notice dated July 8, 1991, the United States Department of Agriculture ("USDA") requested comments on a proposed rule to regulate the quantity of fresh California-Arizona lemons in the 1991-92 season. 56 Fed. Reg. 30879. The proposed rule would establish for the 1991-92 season weekly shipping limits ("prorates") and weekly percentage allocations among districts, as well as the dates for the onset and duration of volume regulation.

POSITION OF THE DEPARTMENT OF JUSTICE

The Department of Justice urges USDA not to impose volume regulation in the 1991-92 lemon season. The evidence is clear that prorates impose continuing costs on society by increasing the price of domestic fresh lemons above the level that would prevail in the absence of volume regulation, as well as by inducing wasteful overproduction of lemons. In contrast to the clear evidence of costs, most of prorate's alleged benefits are not achieved, or could be achieved more cheaply and efficiently in a free market. First, prorate does not increase long-run

grower returns above what growers would receive absent volume regulation. Second, evidence of "price stabilization benefits" is at best ambiguous, and more likely tilts substantially against the realization of any benefits. Specifically, prorate does not provide any risk reduction to growers that cannot be better achieved through the many free market alternatives available; and when lemons and other citrus fruits have been marketed without prorates or other volume restrictions, no apparent "disorder" or other harm resulted. Given the clear and persistent net costs of prorates, the proposed rule would not further the purposes of the Agricultural Marketing Agreement Act, and therefore should not be adopted.

DISCUSSION

I. THE STATUTORY BASIS FOR THE PROPOSED RULE

The proposed rule was published pursuant to Marketing Order 910, as amended, 7 C.F.R. § 910 ("the Order"),1/ which authorizes regulation of the handling of lemons grown in

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1/ The Secretary of Agriculture is empowered by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. §§ 601 et seq. ("AMAA" or "the Act"), to regulate the handling of a broad range of agricultural commodities. Under the Act, "marketing agreements" and "marketing orders" are the basic mechanisms through which the Department of Agriculture promotes the Act's policies. The Act authorizes handlers, with the consent of the Secretary of Agriculture, to enter into marketing agreements that are exempt from the antitrust laws and cover many significant aspects of the handlers' business. The Secretary of Agriculture is also authorized to issue marketing orders, which are regulations that govern the activities of all specified handlers of a particular product.

California and Arizona. The Order and any rules issued pursuant to it bind all handlers of California and Arizona lemons. Pursuant to the Order, on May 7, 1991, the Lemon Administrative Committee ("LAC") adopted a "marketing policy" on which the proposed rule is based. The proposed rule would limit the quantity of fresh lemons that California and Arizona handlers may sell to American consumers during the 1991-92 lemon season.2/

To implement the proposed rule, the Secretary must determine that such action is likely to promote the Act's policies. 7 U.S.C. §§ 608c(4), 608c(16)(A). Three of the stated objectives of the Act are of particular relevance to the issues raised by the proposed rule:

2/ LAC estimated the total lemon crop in the coming season and each individual handler's share of that total (a handler's percentage share of the total industry production is that handler's prorate base). LAC has also recommended a schedule, specifying for each week of the season the maximum quantity of fresh lemons that the industry may make available to United States consumers; that schedule is the centerpiece of the proposed rule. During each week covered by the schedule, an individual lemon handler may not market domestically a quantity in excess of his or her prorate share of the weekly maximum for the industry (i.e., that handler's prorate base times the industry maximum for the given week).

> [T]o establish and maintain such orderly marketing conditions . . . as will establish . . . parity prices . . .
>
> 7 U.S.C. § 602(1).
>
> To protect the interest of the consumer by (a) approaching the level of [parity prices] . . . by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this chapter which has for its purpose the maintenance of prices to farmers above the level [of parity].
>
> 7 U.S.C. § 602(2).
>
> [T]o establish and maintain such orderly marketing conditions . . . as will provide, in the interests of producers and consumers, an orderly flow and supply [of the particular product] to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.
>
> 7 U.S.C. § 602(4).

Courts generally have recognized protection of the purchasing power of farmers as a central aspect of the Act.3/ The language of the statute, however, expressly directs the Secretary to temper the objective of enhancing grower income with the requirement that the interests of consumers also be

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3/ See, e.g., Stark v. Wickard, 321 U.S. 288, 303 (1944); United States v. Rock Royal Co-op, 307 U.S. 533, 549-550 (1939); Rasmussen v. Hardin, 461 F.2d 595 (9th Cir. 1972), cert. denied, 409 U.S. 933 (1972). Thus, a declared policy of the Act is to promote parity prices for farmers.

taken into account.4/ In order to protect consumers, the rate of price adjustments must be compatible with the "public interest." 7 U.S.C. § 602(2). Furthermore, the orderly marketing conditions the statute refers to are those that would benefit both producers and consumers. 7 U.S.C. § 602(4).5/

In the final analysis, the Secretary must act in pursuit of the public interest. Competitive considerations, including the efficient allocation of resources, generally are considered to be an important element of the "public interest" standard, which qualifies not only this program, but also many other types of federal economic regulatory programs.6/ Accordingly, the Secretary, in the past, has identified the maximization of producer returns within the context of open and competitive

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4/ The Secretary of Agriculture in determining "crucial facts and conclusions . . . cannot be guided solely by deference to industry desires." Walter Holm & Co. v. Hardin, 449 F.2d 1009, 1016 (D.C. Cir. 1971); Fairmont Foods Co. v. Hardin, 442 F.2d 762, 766 (D.C. Cir. 1971).

5/ In discussing "orderly marketing" conditions, both USDA and commentators have stopped short of defining the term. Indeed, in its response to comments filed in response to a proposed rule for volume regulation in navel oranges in the 1990-91 season, USDA stated that no definition was required since the Act speaks in terms of avoiding unreasonable fluctuations in supplies and prices. See Final Rule, Dkt. No. FV-90-174PFR, 55 Fed. Reg. 50162.

6/ See, e.g., United States v. FCC, 652 F.2d 72, 88 (D.C. Cir. 1980); Sabin v. Butz, 515 F.2d 1061, 1069 (10th Cir. 1975); Cities of Statesville v. Atomic Energy Commission, 441 F. 2d 987 (D.C. Cir. 1969); Northern Natural Gas Co. v. FPC, 399 F.2d 953, 959-61 (D.C. Cir. 1968).

marketing and the achievement of a more efficient allocation of resources as important goals in administering fruit and vegetable marketing orders. See USDA, Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders (1982). Consistent with the important role of competition policy in the public interest standard, courts have implied that the Secretary has considerable discretion to pursue procompetitive policies under the Act. 7/ Based on principles of sound economic theory as well as past experience, it is clear that on balance the proposed rule will do more to frustrate than to effectuate the goals set forth both by the Secretary and the Act itself.

II. VOLUME REGULATION FOR LEMONS IS NOT IN THE PUBLIC INTEREST

The notice of proposed rule states that the major reason for use of volume regulations under the lemon marketing order is to establish and maintain orderly marketing conditions for lemons and thereby benefit producers through higher returns.8/ The Marketing Policy Statement of the Lemon Administrative Committee

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7/ In Pescosolido v. Block, 765 F.2d 827 (9th Cir. 1985), the Ninth Circuit gave the Secretary broad authority to balance other policy goals against the pursuit of parity. The court held that it was sufficient if the order "tended" to promote parity. "'[P]arity' is a goal toward which the Secretary must strive, rather than the process of setting an objective, fixed price." Id. at 830. See also, Schepps Dairy, Inc. v. Bergland, 628 F. 2d 11 (D.C. Cir. 1979).

8/ 56 Fed. Reg. at 30879.

contains only a conclusory statement that volume controls "may" be needed to assure orderly marketing, and does not provide an adequate basis for implementing volume or size controls in the California/Arizona lemon industry in 1991-92. The Department of Justice suggests that imposition of quantity controls is unwarranted in the absence of evidence that recent suspensions of volume regulation have resulted in "disorderly marketing conditions" within the meaning of the Act. Experience as well as economic theory indicates that any financial benefit to producers is likely to be temporary, and in any event outweighed by clear harm to consumers and a wasteful misallocation of society's resources.

A. Prorate Harms Consumers In the Short and Long Run

Volume controls in the lemon industry are set based on recommendations by the LAC and specify the maximum quantity of lemons that handlers may ship fresh during a given week. In effect, the lemon marketing order authorizes the LAC to act as a legalized cartel to set output for lemons. Production in excess of the allowed quantity must be held for shipment at a later time, be processed, exported or left on the tree.

Consumers are hurt in the short and long run by the higher prices caused by prorate.9/ In the short run, because of the

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9/ Even after producer returns have returned to normal due to entry or expansion (see infra), prorate continues to keep the price of fresh lemons artificially high because diversion to processing makes the growers' cost of fresh lemons artificially high.

higher prices, some consumers do not buy fresh lemons or buy fewer lemons than they would otherwise. These consumers are forced by prorate to forego purchasing fresh lemons at the lower prices that would exist in a free market. The lemon consumption foregone is a clear economic loss. In the long run, there is overproduction of lemons because supracompetitive returns resulting from the prorate encouraged entry or expansion of production. This increased production, however, does not yield a net benefit to consumers, because, as explained below, a substantial proportion is inefficiently diverted to the low-valued processing market. On the contrary, consumers are hurt by lemon overproduction encouraged by prorate. Scarce resources, including land and water, are spent to produce a product -- California/Arizona lemons used for processing -- not justified by the value placed upon it by consumers. Consumers would be better off if these resources were used for producing goods of greater value to consumers, including, but not limited to, fresh lemons.

B. Prorates Create Significant Resource Misallocation

Both USDA and citrus industry members have expressed concern about the possibility of gluts and shortages in citrus markets.10/ In a glut, so much product is available that

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10/ See e.g., Notice of Final Rule, Dkt. No. FV-90-174FR, (Navel oranges) December 5, 1990, 55 Fed. Reg. 50157 et seq.

prices received are lower than the costs incurred by producers. Since price reflects consumer valuation, gluts are clear evidence of wasteful production. In a shortage, there is so little product available that prices greatly exceed costs at which producers could have profitably supplied more product. A shortage demonstrates a wasted opportunity: consumers would have valued (and paid for) additional production at more than the cost of providing it; thus, the socially valuable opportunity to provide that added production is wasted.

The proposed rule, however, would not prevent, but rather would cause wasteful gluts and shortages. Under the Order, LAC decides what fraction of lemons grown may be sold in the domestic fresh market. The rest of the crop must then be processed or exported. Such a policy causes high prices and shortages in the domestic fresh market and low prices and gluts in the processed market.

The extent of the overproduction waste can be measured.11/ Growing lemons costs, on average, $2,748 per acre and there are 64,780 acres in production. Thus, total production cost is $178 million, without taking into account

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11/ The waste due to foregone consumption of fresh lemons (though not readily measured) is in addition to waste attributable to overproduction.

the cost of picking and marketing the lemons.12/ Since processing generally gives growers negative on-tree returns, i.e., the cost of picking and marketing the lemons by itself generally exceeds the price that growers can obtain from processors,13/ and since the demand for processed lemons is very elastic,14/ lemons diverted to processing are a net loss to society.15/ Thus, each percent of the crop that is processed because of prorate is a waste of $1.78 million of production costs.

Since the 1985-86 crop year when there was a prorate suspension, the fraction of the crop diverted to processing has fallen from more than one-half of the crop to approximately one-third of the crop for the upcoming season. That reduction in lemons for processing has reduced overproduction waste by at least $30 million per year.16/ It is hard to project precisely

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12/ See LAC Marketing Policy Statement dated May 7, 1991 at A-2, E-2.

13/ See LAC Marketing Policy Statement at 11; USDA Fruit and Tree Nut Situation and Outlook Report, November 1989 at 30.

14/ LAC notes that when domestic lemon product prices rise imports drive those prices back down. LAC Marketing Policy Statement at 11.

15/ Lemons diverted to processing have nevertheless been picked despite negative on-tree returns for regulatory and disease-prevention reasons.

16/ The added processing of 17% of the crop (i.e., 50%-33%) raises the total expense on producing lemons for processing by $30 million (i.e., 17 times $1.78 million). Since on-tree returns are negative, additional losses are incurred in picking and transporting these additional lemons to processors.

the additional value of further reductions in this waste because such estimates depend on the percentage of the crop that is truly not merchantable as fresh lemons.17/ However, if only a small fraction of the lemon crop is not merchantable as fresh product,18/ waste could be further reduced substantially if prorate were suspended, possibly by as much as $50 million per year.19/

C. Growers Receive No Long Run Benefits From Prorate

The lemon prorate can enhance grower revenue only in the

17/ Part of the crop is not merchantable and would be processed even without regulation; therefore, processing it under regulation is not waste. However, current observations of the fraction of the crop that is not merchantable are distorted by prorate. A grower who knows that one third of his crop will be processed may minimize his production cost by dedicating certain groves to processing, thus saving the expenses that would result in merchantable fresh fruit but are not of much value to processors. Insofar as lemons used for processing were poorly cared for and thus relatively cheap to produce, the estimate of waste given here is somewhat high, though fairly accurate since most of the cost of producing lemons is not directly related to the quality of the fruit. See LAC Marketing Policy Statement at E2.

18/ Smith, The Lemon Prorate in the Long Run, 69 J. of Pol. Econ. 573 (1961).

19/ Waste could be reduced by as much as $50 million per year if, after the suspension of prorate, all but five percent of lemons could be sold as fresh. See Smith, id. Demand for processed lemon products would be met by the remaining five percent of the domestic crop, presumably unmerchantable as fresh lemons and, as needed, by imports.

short run.20/ The prorate can raise revenue by suppressing the volume of sales permitted from a given level of fresh lemon production, but the prorate does not preclude new entry into lemon production or expansion by existing producers. Any artificially raised returns to lemon growers will provide incentives for new lemon production and thus the supracompetitive grower returns will not persist. Increased production from new entry or expansion means that increasingly larger quantities of fresh lemons would have to be diverted to the processing market over time in order to maintain artificially high fresh prices.21/

Increased diversion to the processing market lowers weighted average returns and, as these returns are distributed over an ever-increasing volume of production, average returns per acre decline. Inevitably, weighted average returns seek the

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20/ Prorate quantity restraints raise grower revenue in the short run by restricting sales of fresh lemons if the demand for fresh lemons is relatively inelastic, as compared to demand in the processing market. When demand is relatively inelastic, a given percentage reduction in output generates a larger percentage increase in price. Conversely, when demand is relatively elastic, a given percentage expansion in output generates a smaller percentage decrease in price. Thus, by diverting otherwise merchantable fresh lemons from the fresh to the processing market, prorate may increase prices and grower revenue more in the fresh market than it decreases prices and revenue in the processing market. Overall, average returns to growers may thereby increase relative to returns attainable in a market not subject to volume-restriction regulation.

21/ Indeed, Shepard found that prorate for navel oranges generated increasing diversions to the processing market. L. Shepard, Cartelization of the California-Arizona Orange Industry, 1934-1981, 29 J. of L. & Econ. 83 (1986) at 97.

point where they equal the long-run costs of production and growers earn only a normal return on their investment. While the long-run return is only the normal competitive market return, prorate-caused diversion imposes short and long-run costs on consumers -- higher prices and lower output of fresh lemons, and foregone alternative uses of acreage devoted to unnecessary lemon growing.

The available empirical evidence supports the conclusion that growers do not receive increased long-run returns from prorates. Smith's 1961 study of the lemon industry found that growers did not earn long-run returns above what they could have earned without volume regulation. The reason is that "Lemons are only one of many specialties grown in the areas involved; therefore, expansion is a matter of choice by growers from various crop alternatives .... Where growers can plant additional acreage without encountering higher costs, the limit to expansion normally is a matter of the increased supplies bringing lower prices and thus eventually equating unit returns with unit costs."22/

There is no shortage of land to prevent new lemon production if prorate raises short-term fresh lemon prices. Indeed, according to the 1987 Census of Agriculture, Ventura County has almost half the lemon acreage and more than half the lemon trees

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22/ Smith, supra, n. 19, at 578.

in California. Only 13% of Ventura County's farm acreage, however, grow citrus and only 7% grow lemons and there is no reason to believe that more than a small percentage of this acreage is unsuitable for lemon production. That this acreage has not been converted shows that additional lemon groves would be no more profitable than other agricultural or citrus uses in the long run.

D. Price Stabilization Benefits of Prorate Are Speculative

Some advocates of prorate argue that it produces a societal benefit by lowering grower risk.23/ This argument has two steps: First, prorate is alleged to reduce grower risk by constraining fresh sales during large crop years and second, to the extent that growers prefer to avoid or reduce risk, it is argued that they will tend to view the resulting reduction in risk as a reduction in their cost of production. Such reductions in costs, the argument goes, would tend to result in an increase in the quantity supplied at a given price.24/

23/ LAC emphasizes the goal of increased fresh lemon prices. See LAC Marketing Policy Statement at 3. Price enhancement does not reduce price fluctuation, it merely causes the fluctuation to occur at higher levels.

24/ In enacting the 1990-91 navel orange Final Rule, USDA asserted that "there is a strong argument that prorates reduce variability in prices on an interseasonal basis, resulting in a rightward shift in the supply curve due to decreased producer uncertainty. That is, with decreased price variability, producers are willing to supply more oranges for a given return, resulting in an increase in social welfare." 55 Fed. Reg. at 50162. No evidence whatsoever was cited in support of this assertion.

This argument does not withstand analysis, however. First, prorate may produce its own destabilizing effect on the lemon market. Handlers do not know how much the LAC will allow them to ship until the prorates are announced. That uncertainty about the timing and implementation of quantity controls introduces a kind of "regulatory risk" that interferes with efficient marketing and investment decisions.

More importantly, while it is clear that prices to growers vary, it does not appear that lemon growers face unusual price risks. Patterns of price variation often are associated with known seasonal patterns of changes in supply and demand, as well as with unexpected events such as unusually large crops due to good weather.25/ Predictable seasonal variations do not constitute "risks," however, precisely because they are expected. Not only does any attempt to "stabilize prices" by counteracting predictable seasonal patterns in supply and demand not reduce risk, it reduces social welfare by interfering with the efficient working of the price system.26/

25/ USDA's Report, Fruit and Tree Nuts Situation & Outlook, August 1988, shows seasonal price indexes for lemons that peak in July at almost 10 times the March level.

26/ It is efficient for prices to rise during seasonal periods of high demand so that the existing crop is efficiently allocated among consumers.

The fact that prices may be relatively high in one year, or even over several years, would not in itself signal that the lemon business entails unusual risks. Rather, the relevant question is whether prices and yields over the life of a tree vary significantly from what the producer expected when the tree was planted. Over the life of a tree, many fluctuations in yield and price will offset each other and the revenue over that period will be more stable than might appear from a study of one or two years. There is no evidence that these year-to-year variations in lemon prices portend risks that are any larger than risks handled successfully in other, unregulated markets.

Further, there are many ways that risk is handled in unregulated markets.27/ Because the constraints of prorate interfere with some of these methods (e.g., forward contracting), prorate can lead to a net increase in price risk compared to an unregulated market with forward contracts and other free market methods of handling risk. Indeed, in many

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27/ In its response to comments received on the proposed navel orange volume regulation for the 1990-91 season, USDA without explanation dismissed these mechanisms as not meeting "marketing risks" to producers and handlers, although such risks were not identified. Indeed, given the availability of market mechanisms to reduce risk, it is not clear that there are any remaining marketing risks that pose substantial problems to lemon growers. See, Final Rule, Dkt. No. FV-90-174PR, 55 Fed. Reg. 50157, dated December 5, 1990, at 50163.

comparable commodities, such market-based mechanisms are used successfully to reduce risks. Among these mechanisms are risk-reducing pricing methods such as pre-shipment pricing28/ and forward contracting,29/ use of risk sharing organizations, such as cooperatives30/ and participation plans,31/

28/ At one time, auction markets were the prevailing method of selling citrus. Citrus growers selling fruit in these markets risked unexpectedly low prices because they would have to commit to selling their fruit (by picking and transporting it to the auction) before they knew the selling price. Today, most lemon sales are made at firm prices before shipping. This is also true in other citrus markets. Ninety percent of California-Arizona navel orange sales are made at firm F.O.B. prices before shipping. N. Powers, Effects of Marketing Order Prorate Suspension on California-Arizona Navel Oranges (USDA Economic Research Service Paper) (1990) at p. 2.

29/ Forward contracts are agreements between a grower and a buyer in which a price is set well in advance of the harvest. These contracts are currently used for citrus in Florida, where, except for limes, there are no volume controls. L. Jackson, Introduction to the Florida Citrus Industry - Its Production, Harvesting and Marketing Practices (Florida Cooperative Extension Service, Institute of Food & Agricultural Sciences, University of Florida) (1990). Forward contracts enable growers to transfer the risk of low prices at harvest time to the buyer.

30/ Fruit produced by cooperative members is divided up into pools based on fruit characteristics and time period during which it was marketed. A grower's proceeds depend on the average price received by the cooperative for that pool and are proportionate to the amount of fruit that grower contributed to the pool. This system reduces the risk associated with daily fluctuations of price, since every grower in a given pool receives the same average price.

31/ A participation plan is an agreement between growers and handlers. Participation plans are similar to cooperatives in that a given handler typically will contract with numerous growers and pool the products. A grower's proceeds again depend on the average price received.

diversification of crops32/ or income sources,33/ better use of preservation and storage techniques,34/ and increased access to market information.35/

To evaluate whether price stabilization or other effects of prorates have a net beneficial economic impact requires a balancing of the costs of reduced lemon consumption and resource

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32/ Growers can harvest a number of different crops within a season to reduce their reliance on any one crop.

33/ The 1987 Census suggests income diversification occurs. Of California's farms that sell less than $10,000 per year of agricultural products, 3,396 have some citrus acreage. These very small farms are 40% of the total number of farms with citrus acreage, but account for only 6% of the total citrus acreage. Farms have profits of only a small fraction of their sales, so these farms' profits from agriculture are at most a few thousand dollars. USDA Agricultural Statistics 1989, at 414. Presumably these farmers have substantial non-farm sources of income (i.e., they have diversified into both the farm sector and the non-farm sector). Thus, the smallest farmers appear to be diversified.

34/ Increased storability of citrus fruit allows the grower to hold on to the fruit during periods of low prices and wait for higher prices. Refrigeration is one way growers can increase the marketable life of the fruit. Other methods include shrink wrapping the fruit and waxing the outside of the fruit. Today's technology permits lemons to be stored easily for relatively long periods. Price fluctuations within those time periods therefore do not present a financial risk to growers.

35/ In theory, some form of regulation could be justified if the market failed to provide sufficient information and opportunity to enable each participant to make an informed decision about risk. In practice, current market information is readily available and rapidly disseminated in the citrus industry, both through government and private publications and through the activities of cooperatives. With access to such information, growers, handlers, and buyers can adapt to risk by adjusting their behavior quickly in response to changes in market conditions.

misallocation against any benefits of increased supply due to a program to stabilize prices. A 1981 USDA Report suggests two criteria for evaluating the net economic impact:

> Continual use of [prorate] provisions, particularly use during years with average or smaller than average crops, or increasing diversion to secondary markets, would suggest that efficiency losses from misallocation are likely to exceed any stabilization benefits.36/

Under both of these tests, the net effect of lemon prorate is likely to be negative. The lemon industry has had a federal marketing order program since 1941. With the exception of the 1985-86 crop year, lemon prorates have been used in every year since 1941, whether crops were lean or full and despite significant variation in the size of the crops. Moreover, the fraction of the crop that was processed grew from 10% in the early 1920s to over half the crop in the early 1980s.37/

Some evidence of the effect of prorate on lemon markets comes from the 1985-86 year when prorate was suspended. In

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36/ USDA, A Review of Federal Marketing Orders for Fruits, Vegetables, and Specialty Crops 34 (1981).

37/ Although the trend in diversions to processing after the 1985-86 suspension has been downward to the projected 32% of the crop recommended by the LAC for the 1991-92 crop year, it may well be that the marketing results achieved in 1985-86 encouraged the LAC to allocate increased amounts of lemons to the domestic fresh market. Indeed, there is no reason to believe that domestic demand for fresh lemons has peaked; absent volume regulation, additional quantities of fresh lemons could be purchased by American consumers.

that year, prices were at record levels.38/ The value of production was also a record.39/ The quantity sold was also a record.40/ Thus, in this period of suspension, lemons were marketed perfectly well without prorate.41/ In lemons, therefore, there is no evidence that suspending prorate in the 1991-92 crop would create unreasonable fluctuations in price or supplies.

Further, the 1985-86 experience is consistent with more recent evidence. Prorate was effectively suspended in January 1991 following the December 1990 freeze that caused damage to the 1990-91 crop. Since then, the LAC has recommended open movement of the crop and the proposed rule governing prorate

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38/ USDA's Fruit and Tree Nuts Situation & Outlook Report for March 1991 reports prices in 1985-86 that were twice as high as prices in the previous or following years.

39/ USDA Fruit and Tree Nuts Situation & Outlook Report, November 1989, at 28.

40/ Carman, Hoy F. and Daniel H. Pick, Marketing California-Arizona Lemons Without Marketing Order Shipment Controls, Agribusiness: An International Journal, 4 (1988) at 248.

41/ Carman and Pick, supra, studied the 1985-86 prorate suspension. They attribute the suspension of prorate in 1985-86 to the sour rot outbreak in stored lemons at the end of the 1984-85 crop year and a very short crop in District 3. Carman and Pick compared 1985-86 to the previous nine years when prorate was in effect and found that sales and prices were less stable in 1985-86. However, the sour rot outbreak by itself made prices relatively high and sales relatively low at the start of the crop year. Thus, although it appears that there was much price variability in that year, it is not clear what part of the variability was caused by the suspension.

for the 1990-91 crop has been withdrawn. 56 Fed. Reg. 33213, July 19, 1991, Dkt. FV-90-285. There is nothing in the LAC Marketing Policy Statement for the 1991-92 crop that indicates that the open movement of lemons for more than half of the previous crop year has resulted in disorderly marketing conditions.

Finally, other California citrus fruits have been freely available to fresh markets without prorate, and without disorderly marketing conditions. In recent years, there has been neither volume regulation nor evidence of disorderly marketing for valencia oranges. The same is true for California grapefruit, which is not federally regulated. Navel oranges, for which prorates have been used extensively (but not continuously), provide useful empirical evidence about the effects of regulation. A study by Powers, Zepp & Hoff found that prices for navel oranges were more stable when prorate was suspended.42/ This experience suggests that efficiency losses from misallocation caused by prorate are likely to exceed any stabilization benefits.

42/ N. Powers, G. Zepp & F. Hoff, Assessment of a Marketing Order Prorate Suspension: A Study of California-Arizona Navel Oranges (USDA Agricultural Economic Report 557) (1986).

CONCLUSION

For the reasons stated above, the use of volume controls for California and Arizona lemons would not effectuate the purposes of the Agricultural Marketing Agreement Act, and the Secretary should therefore allow the market to operate without volume restrictions in the 1991-92 season.

Respectfully submitted

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